IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6749 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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THAKORBHAI NATHUBHAI MISTRY - Petitioner(s)

Versus

BALVANTBHAI @ DALPATBHAI CHHAGANBHAI NAYAK & 2 - Respondent(s)

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Appearance :
MR ASHISH M DAGLI for Petitioner No(s).: 1.

MR NV GANDHI for Respondent No(s).: 1 - 1, 2,3.
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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

Date : 22/08/2005

ORAL JUDGMENT

1.By filing instant petition under Articles 226/227 of the Constitution of India, the petitioner seeks to challenge the order dated 18.12.2001 recorded below

application exhs. 16 and 17 by the learned Civil Judge (JD), Bardoli, by which the application filed by the petitioner praying to join subsequent purchaser of the suit property and to amend the cause-title accordingly came to be rejected.

2. The petitioner who is the original plaintiff, has filed Regular Civil Suit No. 100 of 1994 and Regular Civil Suit No. 139 of 1993. The Regular Civil Suit No. 139 of 1993 was filed seeking injunction with a prayer that in the immovable property situated at village Puni, Block No.85, Area 4 acres and 26 gunthas of land, the respondents or their agents have no right to enter and to pay any revenue in respect of the said land. According to the petitioner, he is the co-owner of the suit property. However, in connivance of respondent no.3, the land is attempted to be disposed of and accordingly, the suit was filed.

3. The respondents appeared and filed their reply at exh.8, inter alia contending that a compromise is arrived on 6.9.1990 and in view of that the suit is not maintainable. It was further contended that earlier a suit, being Regular Civil Suit No. 69 of 1990, is filed wherein the compromise has been arrived at on 6.9.1990 and in view of that the present suit is not maintainable. It was also contended that the proper and necessary parties are not joined in the suit as it was contended that the original defendant no.3 has only made agreement to sale with one Jayeshkumar Jayantilal Nayak and still he is not joined s a party to the proceedings and accordingly, the suit is bad for non-joinder of necessary parties. It was also contended that the property is sold by way of registered sale deed and therefore the suit is not maintainable.

According to the petitioner, the legitimate share of the petitioner is not being given and also the compromise is not effected. According to the petitioner, the alleged transaction of performance of Satakhat or sale deed as contended in the reply is not placed on record and the same was also not given to the petitioner by the respondents. The application at exh.16 was submitted before the Court for joining the party who have purchased the property. Similarly application at exh.17 has also been moved under Order 17 of the Code of Civil Procedure ('the Code' for short) seeking amendment of the plaint. Both the applications came to be rejected, which has given rise to the present petition.

4. This Court has considered the submissions advanced by Mr. Ashish M. Dagli, learned advocate of the petitioner and Mr. Nehal Gandhi, learned advocate of the respondents and also perused both the impugned orders.

5. So far as the factual matrix is concerned, there is no dispute that the petitioner has filed 2 Suits being Regular Civil Suit No. 100 of 1994 and Regular Civil Suit No. 139 of 1993 seeking injunction with a prayer that in the immovable property situated at village Puni, Block No.85, Area 4 acres and 26 gunthas of land, the respondents or their agents have no right enter and to pay any revenue in respect of the said land. According to the petitioner, he is the co-owner of the suit property. However, in connivance of respondent no.3 the land is attempted to be disposed of and accordingly, the suit was filed. The respondents appeared and filed their reply at exh.8, inter alia contending that they have disposed of the suit property and application exh.17 was filed to amend the cause-

title of the plaint accordingly. Both the applications have been rejected.

6. According to this Court, the learned trial Judge has committed error in not allowing the applications as the respondents have raised the plea that they have disposed of the property by a registered sale deed, therefore, the subsequent purchasers are not only necessary but proper parties to adjudicate the issues raised in the suit.

7. In aforesaid view of the matter, the impugned order deserves to be quashed and set aside by allowing this petition.

8. For the foregoing reasons, the petition succeeds and accordingly it is allowed with no order as to costs. Resultantly, the order dated 18.12.2001 recorded below application exhs. 16 and 17 by the learned Civil Judge (JD), Bardoli is hereby quashed and set aside and both the applications are allowed.

9. The petitioner is permitted to implead subsequent purchasers of the suit property in the cause-title and plaint be accordingly amended. Rule is made absolute to the aforesaid extent.

(A.M.Kapadia,J)

Jayanti*